

OGC Has Reviewed

Approved For Release 2001/09/03 : CIA-RDP84-00709R000400070226-2

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07-6-40

Chief, FDT

27 December 1949

Legal Staff

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Request for per diem - [REDACTED]

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1. Your memorandum of 5 December 1949 forwarded [REDACTED] claim for per diem during the period 5 June 1946 to 20 March 1947. Attached were the comments of the Acting Chief of the Finance Division in a memorandum dated 25 November 1949.

2. Prior to the passage of P.L. 600 (79th Cong.), initial appointees were obliged to pay their expenses together with the transportation of their dependents and household effects to the first post of duty, whether in the United States or abroad. Section 7 of the Act relieves the initial appointee of this expense where the first post of duty is outside the continental United States. The Act was approved 2 August 1946, and Section 7 became effective on that date. To that extent, we disagree with the effective date of "1 November 1946" indicated in the memorandum from the Acting Chief, Finance Division.

3. The Comptroller General has stated (see 26 Comp. Gen. 489, 499) that "the date of the consummation of the appointment is the controlling date for the purpose of determining whether an employee's immediate family, household goods, and personal effects may be transported under the provisions of Section 7 of Public Law 600. Assuming, in the example given, that the employee's appointment was consummated, that is, that an appointment had been tendered to the employee and accepted by him prior to 2 August 1946, then he would not be a new appointee within the meaning of Section 7 of Public Law 600." Subject was actually employed by the Strategic Services Unit on 5 June 1946. He was then terminated and later employed by the Central Intelligence Group on 19 October 1946. In 26 Comp. Gen. 554, the Comptroller states, in syllabus: "An employee transferred from one department to another for overseas duty, prior to the effective date (1 November 1946) of Section 1 of the Administrative Expense Statute of 2 August 1946, authorizing payment of the expenses of employees' travel, and transportation of their dependents and household effects upon such transfer, but subsequent to the effective date (2 August 1946) of Section 7 in said Act, authorizing such expenses for 'new appointees' for overseas duty, is to be regarded as a new appointee and, therefore, entitled by virtue of said Section 7 to reimbursement of expenses of his travel, and transportation of his family and household effects to his overseas station." We believe that the transfer of the employee from SSU to CIG is, and should be

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considered, an inter-departmental transfer entitling the employee to be regarded as an initial appointee within the definition of that opinion, and, therefore, entitling him to payment of properly authorized travel, and transportation expenses under Section 7 of P.L. 600. Per diem, in lieu of subsistence at a temporary duty station pending actual travel overseas, could have been authorized then for the period from October 1946 to 20 March 1947, depending upon agency instructions.

4. The Comptroller has indicated that the grant of such travel and transportation expense is not mandatory, and lies within the discretion of the agency. CIG Administrative Order No. 42 provided for payment of such per diem not to exceed \$6.00 for the first sixty days, and \$4.00 per day thereafter, provided the employees hired for overseas duty were required to report to Washington for temporary duty in connection with processing and training prior to dispatch abroad. Approval of the Branch Chief alone was sufficient for employees of grade CAF-7 or below, while those above could be paid per diem only upon approval of the ADSO, on request from the Branch Chief. Requirements of approval were stipulated in SO Directive No. 10, dated 22 January 1947.

5. Although Administrative Instruction No. 42 was not issued until 5 December 1946, it is indicative of the Agency's intentions, and there appears to be no reason why per diem could not have been paid the employee beginning as of 19 October 1946. This office, therefore, believes that the employee was entitled to per diem for the period from 19 October 1946 to 20 March 1947, provided approval was obtained within the requirements of SO Directive No. 10.

6. The employee is submitting a claim for payment of per diem, but it is not clear whether his original orders authorized such per diem. The validity of authorizing such per diem at the time such orders were issued for the period indicated is given above. If the original orders did not provide for per diem, payment cannot now be authorized, since it cannot be given a retroactive effect. See 7 Comp. Gen. 276, 277. If authorization of per diem was omitted from the original orders through clerical (and not administrative) inadvertence, however, a certified statement from the officer issuing travel orders at the time would probably be acceptable. The statement, however, should show that per diem was in fact being authorized at the time for similar personnel, and that it had been so authorized for the claimant although the orders did not properly reflect it.

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Attach:

1. Ltr dtd 25 November to Chief FDT
2. Ciy ltr 21 Nov. 1949 to Finance Div.

cc: Subject

Chrono

Legal Decisions

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